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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,214	04/21/2004	Jonathan Gutwein	001230	3213
29569	7590	05/25/2007		
FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080			EXAMINER MAEWALL, SNIGDHA	
			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			05/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/709,214

Applicant(s)

GUTWEIN, JONATHAN

Examiner

Snigdha Maewall

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/21/02004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Summary

1. Receipt of IDS filed on 04/21/2004 is acknowledged.

Claims 1-18 are pending in this application and claims 1-18 will be prosecuted on the merits.

Claim objections

2. Claims 2 and 4 are objected to because of the following misspelled phrase. "carbohydrate block". Examiner interprets the correct phrase to be "carbohydrate blocker".

Claim 3 is objected to for reciting the phrase "hangover preventer selected from". For the purposes of examination the phrase is interpreted as "hangover preventer is selected from". Claim 3 recites the limitation "from a group consist of", examiner suggests correcting the spelling to "consisting of".

Claim 13 is objected to because of the misspelled word "cpsules" for "capsules". Claims recited as [c14] and [c15] have not been numbered in the proper dependent form. For the purposes of examination, the claims will be interpreted as claim 15 and claim 16. Examiner suggests renumbering the claims in order to reflect proper dependency of claims 17 and 18.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites the supplement comprising "carbohydrate blocker" and "hangover preventer". The phrases "carbohydrate blocker" and "hangover preventer" contains functional limitations of the supplement and are absent of any structural identifiers relating to the functional limitations. The claim is merely disclosing the inherent properties that would be possessed by the supplement of instant claim1.

Claims 3 and 4 contain the limitation "set of carbon", claims 7, 15 and 16 contain the limitation "vegetable carbon" and claim 6 contains the limitation "carbon". With regard to these claims, it is the examiners position that these terms do not represent the structural identities as recited. Carbon is an atom and is in the form of graphite or charcoal etc. To provide adequate written description and evidence of a claimed

Art Unit: 1615

supplement component, the specification must provide sufficient distinguishing identifying characteristics. The factors to be considered include structure, physical and /or chemical properties, functional characteristics and structure /function correlation. With respect to the components " set of carbons", "vegetable carbon" and "carbon", the specification is deficient in terms of describing the structural characteristics.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Since claim 15 is not numbered in proper format, the claim has no antecedent basis thereby making the claim indefinite. Accordingly, dependent claim 18 renders itself indefinite for being dependent on indefinite claim 17. Claims 6 and 15-16 recite the limitation "kidney bean extract". It is unclear as to whether the extract is organic or aqueous. Accordingly, the claims 6 and 15-16 are indefinite. Claims 8 and 15-16 recite the limitation "vanadium chelate". The structure of the chelate is not specified which renders the claim indefinite. Appropriate correction is required. Claims 14 and 18 recite the limitation "ingested prior to use", it is unclear to the

examiner as to what applicant is meant by use when it is already ingested. The claim is unclear and indefinite. Claims 5, 7-14 and 17-18 have grammatical errors, which makes the claims indefinite. Examiner suggests rewriting the sentences. Examiner suggests rewriting the claims in clear and specific manner.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chokshi (US Pg Pub. 2003/0059403 A1).

Chokshi discloses a composition containing phaseolamin and a mineral, such as chromium or vanadium or both. The invention is directed to methods for controlling carbohydrate cravings, inducing weight loss and inhibiting the absorption of dietary starch (abstract). Phaseolamin is derived from Phaseolus Vulgaris or the white kidney beans, phaseolus is effective for weight loss and carbohydrate binding (page 3, paragraph [0045]. Vanadium chelate is taught on page 3 paragraph [0026]. Various additives that can be added to the composition are calcium carbonate (page 3, paragraph [0038]).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 -7 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chokshi in view of Riley (US Patent No. 5,976,568).

Chokshi does not disclose vitamins such as B2 and B12, Coenzyme Q 10, vegetable carbon and the supplement formulation in capsule. However, Riley discloses dietary supplement compositions for optimizing health benefits, methods and disease prevention, protection against nutritional losses and deficiencies due to dietary patterns (title and abstract). Example 2 and claim 1 depict presence of vitamin B12, vitamin B2, Coenzyme Q10 and chromium. The formulation can be in capsule form (see abstract). The oral dosage form may include talc, calcium carbonate and FD&C colorings (column 22, lines 35-39).

It would have been obvious to the one of ordinary skilled in the art at the time the invention was made to incorporate vitamin B12, vitamin B2, coenzyme Q10 in the formulation disclosed by Chokshi because such ingredients constitute the benefit of being dietary supplement and thus help in nutritional benefits. A skilled artisan

would thus have been motivated to prepare a composition comprising vitamin B12, vitamin B6 and coenzyme Q10 and vegetable carbon with phaseolus vulgaris and calcium carbonate as a supplement with a reasonable expectation of success.

11. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chokshi in view of Riley (US Patent No. 5,976,568) and further in view of Alviar et al. (US Pg Pub No. 2002/0187204 A1).

The teachings of Chokshi and Riley have been discussed above. The references do not specifically teach chromium picolinate. However, Alviar et al. discloses a diet composition comprising chromium picolinate and vanadium compound for managing body weight. Since such a composition helps in managing body weight, it would have been obvious to the one of ordinary skilled in the art at the time the invention was made to incorporate vanadium and chromium picolinate in the composition forwarded by Chokshi and Riley comprising phaseolus vulgaris, calcium carbonate and vegetable carbonate with a reasonable expectation of success. It should be noted that with respect to the various amounts claimed in claim 16, it is the position of the examiner that it would have been within the purview of a skilled artisan to optimize the amounts of various components in the composition with the experimental manipulation.

"[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Art Unit: 1615

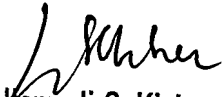
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Snigdha Maewall

Art Unit 1615


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